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PETROLEUM PRODUCTS GROSS EARNINGS TAX

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You asked (1) for a description and legislative history of the petroleum products gross earnings tax, specifically its application to propane used to heat homes and run generators, and (2) whether there are any state or federal income tax credits or deductions available for medically-necessary generators and the fuel used to run them.

The Office of Legislative Research is not authorized to provide legal opinions and this report should not be construed as one.

SUMMARY

The petroleum products gross earnings tax applies to the gross earnings of companies distributing petroleum products in Connecticut. The tax is 7% of the revenue from the initial sale of petroleum products, including propane, which typically occurs at the wholesale level. It is scheduled to increase to 8.1% on July 1, 2013. Under CGS § [12-587](#), propane used exclusively for heating purposes is exempt from the tax. According to Marc Papandrea, Tax Unit Manager at the Department of Revenue Service's Audit Division's Excise Unit, propane sold for use in a generator is subject to the tax since it is not used exclusively for heating purposes.

The legislature first enacted the tax as part of the overall tax package for FY 1981 in response to rapidly increasing home heating oil prices and increased profits in the oil industry. The original legislation imposed a

2% gross earnings tax on any petroleum company engaged primarily in refining and distributing petroleum or petroleum derivatives to wholesale and retail dealers in this state. The act included a provision prohibiting companies from passing the tax on to consumers, but it was later struck down on the grounds that it was preempted by federal law (*Mobil Oil Corp. v. Dubno* (D.C. 1980) 492 F. Supp. 1004).

The legislature has since (1) extended the tax to all petroleum products distributors; (2) limited its application to the product's first sale in the state; (3) enacted various exemptions, including those for heating oil and propane gas used for heating purposes; and (4) increased the tax from 2% to 7%.

There are no Connecticut state income tax credits or deductions for medical expenses. Taxpayers may deduct qualifying medical expenses when calculating federal taxable income, but they are only deductible to the extent that they exceed 7.5% of a taxpayer's adjusted gross income (AGI). Taxpayers should consult a tax professional to determine whether a medically necessary generator and the fuel used to run it qualify as a deductible medical expense for federal tax purposes.

PETROLEUM PRODUCTS GROSS EARNINGS TAX

The tax applies to gross earnings of companies distributing petroleum products in Connecticut. It is 7% of the revenue from the initial sale of petroleum products in the state, which typically occurs at the wholesale level. Taxed products include gasoline, aviation fuel, kerosene, propane, greases, lubricants, mineral oils, motor oil, and crude oil. The tax is payable quarterly. According to the Office of Fiscal Analysis, there are approximately 625 taxpayers remitting the tax ([Connecticut Tax Expenditure Report](#), January 2012).

Revenue from the following types of petroleum product sales is exempt from the tax:

- products sold for export and use exclusively outside the state;
- number 2 heating oil used exclusively for heating, in a commercial fishing vessel, or in a vessel primarily engaged in interstate commerce;
- kerosene used exclusively for heating, when delivered by a truck that also delivers number 2 heating oil with a metered delivery ticket or to a centrally metered system servicing a group of homes;

- propane gas used for heating;
- bunker fuel oil, intermediate fuel, marine diesel oil, and marine gas oil used in vessels displacing over 4,000 dead weight tons;
- number 6 fuel oil used by manufacturers;
- paraffin and microcrystalline waxes;
- any commercial heating oil blend containing no less than 10% of alternative fuels made from agricultural produce; food waste; waste vegetable oil; or municipal solid waste, including biodiesel and low-sulfur dyed diesel fuel; and
- diesel fuel, except that used in an electric generation plant to generate electricity (CGS § [12-587\(b\)\(2\)](#)).

Legislative History

Rapidly escalating residential heating oil prices in the late 1970s and growing uncertainty about the long-term supply of oil prompted the legislature's Joint Committee on Energy and Public Utilities to study the supply and marketing of heating oil in Connecticut. Among other things, the February 1980 study recommended a gross earnings tax on oil companies as a way to discourage price increases. It concluded that, "to a significant extent, the percentage increases in residential heating oil prices in Connecticut were due to increased profit margins in the oil industry. It would therefore appear to be appropriate to utilize state taxing authority to encourage the heating oil industry to adjust profit margins to a more equitable level" (Joint Committee on Energy and Public Utilities, *Petroleum Products Investigation: Report and Recommendations*, February 11, 1980).

Later that year, the legislature enacted the petroleum products gross earnings tax as part of the overall FY 1981 tax package. PA 80-71 imposed a 2% gross earnings tax on any petroleum company engaged primarily in refining and distributing petroleum or petroleum derivatives to wholesale and retail dealers in this state. The tax applied on gross earnings from all in-state petroleum product sales by (1) petroleum refiners who were also distributors and whose primary business was refining and distribution and (2) companies which were at least 25% owned by petroleum companies.

The act included a provision specifying that the tax was not to be construed as a tax upon the purchasers of petroleum products, but rather that it constituted a part of the operating overhead of such companies. Consequently, it restricted how much companies could raise the wholesale prices of those petroleum products exempt from federal price controls to an amount no higher than the average amount of the increase for such products in all ports on the eastern coast of the United States (CGS § [12-599](#)).

Some legislators expressed doubts about the legality of the tax's "pass-through" prohibition, but supported the tax as a way to discourage rising prices. Representative Roberti expressed this sentiment during the House debate:

After doing a poll in my district, the results were 99.9% for this tax....They're frustrated, Mr. Speaker. They're frustrated by big oil. They're frustrated by 69% profit margins. ... I think its time that the people of the state of Connecticut had an opportunity to send the message to the big oil companies. And to let these conglomerates know that they're willing to take the chance (*House transcript*, April 11, 1980, pgs. 1823-1833).

A federal district court later struck down the pass-through provision on the grounds that it was preempted by federal law (*Mobil Oil Corp. v. Dubno* (D.C. 1980) 429 F. Supp. 1004). Because of a severability clause contained in the original act, the tax remained unaffected by the court decision.

Table 1 summarizes the legislative changes to the tax since its enactment.

Table 1: Legislative Changes to the Petroleum Products Gross Earnings Tax

<i>Year Enacted</i>	<i>Description</i>
1982 (PA 82-157)	Extended the tax to all petroleum product distributors, but limited its application to the product's first sale in the state
1985 (PA 85-159 and PA 85-381)	<ul style="list-style-type: none"> Exempted home heating oil and required petroleum companies to reduce their home heating oil prices to reflect any savings resulting from the tax's elimination (PA 85-159) Revised reporting dates and payment procedures (PA 85-381)
1987 (PA 87-312)	Exempted propane gas for residential heating purposes sold in containers for residential heating use or sold and delivered for residential heating use to a maximum 1,000 gallon stationary storage tank
1989 (PA 89-373)	Increased the tax from 2% to 3% per quarter to finance a newly created Underground Storage Tank Petroleum Cleanup Fund
1991 (PA 91-3, JSS)	<ul style="list-style-type: none"> Increased tax from 3% to 5% per quarter Expanded tax to any company importing more than \$100,000 worth of petroleum products into the state quarterly for its own use Eliminated requirement that a company that realizes any savings because of the elimination of the tax on number 2 heating oil offset the savings by a decrease in the product's sale price
1992 (PA 92-177 and PA 92-17, May Special Session (MSS))	<ul style="list-style-type: none"> Exempted fuel in vehicle fuel tanks of companies that import petroleum products for their own use and consumption (PA 92-177) Exempted bunker and marine diesel fuel oils and marine gas used in vessels with displacements of 4,000 dead weight tons or more (PA 92-17, MSS)
1993 (PA 93-74)	Exempted kerosene for home heating
1994 (PA 94-101 and PA 94-4, MSS)	<ul style="list-style-type: none"> Corrected a reference to a type of license held by suppliers (PA 94-101) Specified a method for calculating gross receipts in determining liability for the tax (PA 94-4, MSS)
1995 (PA 95-172)	Exempted propane for motor fuel or nonresidential heating from 7/1/95 to 1/1/00
1996 (PA 96-183)	Exempted No. 2 oil used in commercial fishing vessels.
1997 (PA 97-281)	<p>Phased down tax on the following from 1998 to 2002 to 1% as of 7/1/02:</p> <ul style="list-style-type: none"> Fuel used in vessels primarily engaged in interstate commerce #6 fuel oil used by industrial customers

Table 1 (continued)

<i>Year Enacted</i>	<i>Description</i>
1998 (PA 98-244)	Made minor, technical, and clarifying changes
1999 (PA 99-121)	Made a technical change
2000 (PA 00-174)	Exempted paraffin and microcrystalline waxes
2001 (PA 01-6, JSS)	<ul style="list-style-type: none"> Extended exemption for propane used as motor vehicle fuel to 7/1/02 Reduced the quarterly import threshold, from \$100,000 to \$3,000, for a company that is not a petroleum refiner or distributor to pay the tax
2002 (PA 02-4, MSS)	<ul style="list-style-type: none"> Exempted fuel cell fuel until 7/1/04 Extended exemption for propane used as motor fuel to 7/1/04
2004 (PA 04-231)	Extended the following exemptions from 7/1/04 to 7/1/08: <ul style="list-style-type: none"> Propane used as motor vehicle fuel Fuel cell fuel
2005 (PA 05-4, JSS)	Increased tax from 5% to: <ul style="list-style-type: none"> 5.8% for FY 06 6.3% for FY 07 7.0% for FY 08 7.5% for FYs 09-13 8.1% for FY 14 and thereafter
2006 (PA 06-143)	Exempted commercial heating oil blends containing not less than 10% biofuels
2007 (PA 07-199, amended by PA 07-1, JSS)	Exempted all diesel fuel except diesel used in an electric generating plant to generate electricity
2008 (PA 08-2, June 11 SS)	Eliminated rate increase to 7.5% scheduled for 7/1/08

Propane Exemption

The legislature enacted the exemption for propane gas for residential heating use in 1987. To qualify for the exemption, the propane gas had to be sold in containers for residential heating use or sold and delivered for residential heating use to a maximum 1,000-gallon stationary storage tank (PA 87-312). During the Senate debate, Senator DiBella explained that the exemption “would bring equity to the state tax policy by limiting tax on users which is unevenly applied. In 1985 the legislature eliminated the tax for number 2 fuel oil and propane competes with number 2 fuel oil for residential customers. This would create a balance

between the two fuels” (*Senate transcript*, April 29, 1987, pg. 1772). Representative Smoko echoed this idea during the House debate, remarking that the exemption for propane was “bringing it into essentially equal terms with home heating fuel” (*House transcript*, May 13, 1987, pg. 6629).

PA 95-172 made all sales of propane for heating purposes exempt, not just those for residential heating sold in containers or sold or delivered to containers of up to 1,000 gallons capacity.

INCOME TAX CREDITS OR DEDUCTIONS FOR MEDICALLY-NECESSARY GENERATORS

There are no Connecticut state income tax credits or deductions for medical expenses. Taxpayers may deduct qualifying medical expenses when calculating federal taxable income, but such expenses are only deductible to the extent that they exceed 7.5% of a taxpayer’s AGI. For example, if a taxpayer’s medical expenses total \$3,500 and his AGI is \$40,000, he can deduct \$500 of medical expenses (\$3,500 (total expenses) less \$3,000 (7.5% of \$40,000)). The federal medical expense deduction threshold is scheduled to increase to 10% of federal AGI in 2013 for taxpayers under age 65 and in 2016 for taxpayers age 65 and over.

For federal tax purposes, qualified medical expenses include amounts paid for special equipment installed in a home, or for improvements, if their main purpose is medical care for the taxpayer or his or her spouse or dependent. The cost of permanent improvements that increase the value of a property may be partly included as a medical expense. The cost of the improvement is reduced by the increase in the value of the property. The difference is a medical expense. If the value of the taxpayer’s property is not increased by the improvement, the entire cost is included as a medical expense ([*Medical and Dental Expenses \(Including the Health Coverage Tax Credit\)*](#), IRS Publication 502, 2011).

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